

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Lafayette Westly Knotts,)	
)	C/A No. 6:07-0590-MBS
Plaintiff,)	
)	
vs.)	
)	ORDER
Cpl. Hammi Mays, Allendale Correctional)	
Institution,)	
)	
Defendant.)	
_____)	

Plaintiff Lafayette Westly Knotts is an inmate in custody of the South Carolina Department of Corrections. At the time of the underlying events, Plaintiff was housed at the Allendale Correctional Institution. Plaintiff brings this action pursuant to 42 U.S.C. § 1983, alleging that his constitutional rights were violated when Defendant Mays sprayed Top Cop gas into Plaintiff's cell.

This case currently is before the court with respect to a letter filed by Plaintiff on June 11, 2007. Plaintiff indicates he would "like to do away with the law suit[.]" (Entry 15) The letter has been construed as a motion to dismiss. Defendant filed a response on June 11, 2007. (Entry 16) Defendant concurs in the motion to dismiss, but, because Defendant previously filed a motion for summary judgment on May 18, 2007, Defendant requests that the motion to dismiss be granted with prejudice.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., the matter was referred to United States Magistrate Judge William M. Catoe for pretrial handling. On October 26, 2007, the Magistrate Judge issued a Report of Magistrate Judge in which he recommended that Defendant's motion for summary judgment be granted, and that Plaintiff's motion to dismiss also be granted. Plaintiff filed no objections to the Report of Magistrate Judge.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of any portions of the Report of Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of objections to the Report of Magistrate Judge, this court is not required to give any explanation for adopting the recommendation. Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

The court has thoroughly reviewed the record. The court adopts the recommendation of the Magistrate Judge to the extent that he recommends the motion to dismiss be granted. The court declines to reach the merits of Plaintiff's allegations; therefore, it declines to grant Defendant's motion for summary judgment. Plaintiff's motion to dismiss (Entry 15) is **granted**, with prejudice. See Fed. R. Civ. P. 41(b) (providing that the court can dismiss at the plaintiff's instance "upon such terms and conditions as the court deems proper").

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

Columbia, South Carolina

November 27, 2007

NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified that he has the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.